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Memorandum re qualifica-
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Memorandum
Re Qualification of
Voters

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GENERAL
ELECTION

1945



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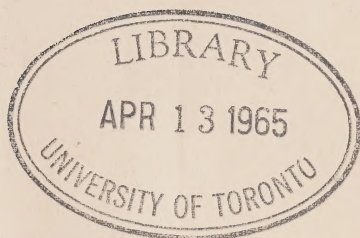


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QUALIFICATION OF VOTERS

The following provisions apply generally to voters in Cities, Towns, Villages and Townships and Territory having municipal organization.

There are two provisions that must be carefully noted which do not apply generally. These two provisions relate to:

1. THE RESIDENCE QUALIFICATION

This differs in cities and towns having a population of 10,000 and over, and in townships bordering on a city having a population of 100,000 or more—from the residence qualification in all other towns, villages and townships.

[Sec. 18 (1) (e), Election Act.]

2. THE RIGHT TO VOTE BY BEING VOUCHERED FOR WHEN NAME OMITTED FROM LIST

This only applies in townships, villages and towns having a population of not more than 3,500 according to the last Dominion census, provided that such polling subdivision where the person is entitled to vote is not within five miles of a city having a population of 100,000 or over.

[Sec. 95, Election Act.]

But does not apply to any polling subdivision in a township, no matter how far removed from a city of 100,000 or over, provided such township borders on a city of 100,000 or over.

THE QUALIFICATIONS

1. THE VOTER MUST BE OF THE FULL AGE OF TWENTY-ONE YEARS

[Sec. 18 (1) (a), Election Act.]

(a) This means that the voter must be of the full age of twenty-one years **at the time of tendering his vote**, and he may have his name entered on the list, although under age, provided he will be twenty-one on or before polling day.

(b) Except that there is no age limit for members of the Canadian Forces on Active Service.

2. THE VOTER MUST BE A BRITISH SUBJECT

[Sec. 18 (1) (b), Election Act; also Sec. 21.]

This means a British subject (a) by birth; (b) by naturalization.

NATURALIZATION

[Sec. 21, Election Act.]

WHEN WOMEN ARE DEEMED TO BE NATURALIZED

A woman, for the purpose of The Election Act, is deemed to be a British subject by birth or naturalization—

- (1) If she was born a British subject and is unmarried.
- (2) If she was born a British subject and is married to a British subject.

And in both cases has not changed her allegiance and has not become a subject of any foreign power or a citizen of any foreign state.

- (3) If she has been naturalized in her own right prior to the 12th day of April, 1917, as a British subject.
- (4) If she has since that date become naturalized.

And in both cases has not changed her allegiance and has not become a subject of any foreign power or a citizen of any foreign state.

- (5) If she has become a British subject by naturalization as a British subject of her parent while she was a minor.
- (6) If she is married to, or being a widow, is the widow of a British subject, and in both cases has not become a subject of any foreign power or a citizen of any foreign state, or done any act to so become a subject of any foreign power.

Note.—The statutory declaration of any person claiming to be a British subject shall be *prima facie* evidence of the facts declared to.

Note.—The above provisions as to naturalization do not apply to any person qualified to vote under the provisions dealing with “Disabled Soldiers’ Franchise” as set out in Sec. 18 (2). Section 21 of The Election Act, which covers the cases of naturalization and mentioned above, is as follows:

British Subjects—Naturalization

Section set out in full, and is as follows:

Sec. 21—(1) A man who was not on the 12th day of April, 1917, a British subject, shall not be entitled to be entered on the list and to vote at an election unless he has since become naturalized as a British subject.

(2) A woman shall be deemed to be a British subject by birth or naturalization within the meaning of this Act, so as to entitle her to vote—

- (a) if she was born a British subject and is unmarried or married to a British subject, and has not become a subject of any foreign power or a citizen of any foreign state; or
- (b) if she was naturalized in her own right prior to the 12th day of April, 1917, as a British subject, or if she has since become naturalized under the laws of the Dominion of Canada or of Great Britain, and has not become a subject of any foreign power or a citizen of any foreign state; or
- (c) if she has become a British subject by naturalization as a British subject of her parent while she was a minor, and has not become a subject of any foreign power or a citizen of any foreign state; or
- (d) if she is married to, or being a widow, is the widow of a British subject, and since such marriage, has not done any act to cause herself to become a subject of any foreign power or a citizen of any foreign state,

and no woman shall be entitled to be entered on the list of voters or to vote unless so qualified. R.S.O. 1937, c. 8, s. 21 (2).

(2a) For the purposes of this section the statutory declaration of any person claiming to be a British subject shall be prima facie evidence of the facts declared to. R.S.O. 1937, c. 8, s. 21 (3).

(3) Subsections 1 and 2 shall not apply to any person qualified to vote under paragraph 2 of section 18. R.S.O. 1937, c. 8, s. 21 (4).

3. THE VOTER MUST NOT BE ONE OF THE PERSONS DISQUALIFIED BY LAW FROM VOTING

[Sec. 18 (1) (c), Election Act.]

Who May Not Vote

[Sec. 15, 16, 17, Election Act.]

(1) Judges of the Dominion and Provincial Courts, Clerks of the Peace, Crown Attorneys, and Police Magistrates in cities and towns having a population of 5,000 and over.

(2) A Returning Officer or Election Clerk, except where it is necessary for a returning officer to give a casting vote.

(3) A person who at any time before or during the election has been employed as counsel, solicitor or clerk or in any other capacity by a candidate, or by any person at or in reference to the election, or for the purpose of forwarding the same, and who has received or expects to receive, either before, during or after the election, from any candidate or from any person, for acting in such capacity, any sum of money, fee, office, place or employment, or any promise, pledge or security therefor.

This does not include, of course, any deputy returning officers, poll clerks or constables, but it does include scrutineers who are paid or expect to be paid for acting.

(4) A prisoner in a gaol or prison undergoing punishment for a criminal offence.

(5) A patient in a mental hospital.

(6) A person who is maintained in whole or in part as an inmate receiving charitable support or care in a municipal house of refuge or house of industry.

4. RESIDENCE OF VOTER

(1) The voter must be at the time of voting and for a period of twelve months preceding the day of polling a resident of and domiciled in Canada.

[Sec. 18 (1) (d), Election Act.]

(2) In the case of Active Service voters the domiciliary qualification is three months instead of twelve months.

OCCASIONAL OR TEMPORARY ABSENCE

[Sec. 20, Election Act]

A person may be resident in a municipality within the meaning of The Election Act, notwithstanding occasional or temporary absence.

What is required in such cases is the intention to return and the ability to do so of one's own volition, and certain classes are specially provided for those whose absence is enforced—as follows:

- (1) A member of a permanent militia corps enlisted for continuous service, or a member of the active militia.
- (2) Persons serving in the naval or military or air forces of Canada or the British Empire or any part or ally thereof against the King's enemies, or as a nurse or nursing sister, or in any other capacity with such forces.
- (3) A student in attendance at an institution of learning in the Dominion of Canada.
- (4) A mariner—which is defined by Sec. 1 of The Election Act—which shall mean and include any man or woman who is serving in His Majesty's naval forces of Great Britain or Canada, or is serving in any capacity on a mercantile vessel registered at a British port at the time of the issue of a writ for any provincial election.

In these cases such absence shall not disentitle any person to be entered on the voters' list or to vote at his or her home.

5. RESIDENCE IN ELECTORAL DISTRICT

There are two distinct residence qualifications.

(1) Cities and towns having a population of 10,000 or more, and townships bordering on a city having a population of 100,000 or more. In all such cases the person "must be ordinarily resident in such city, town or township AT THE DATE OF THE ISSUE OF THE WRIT OF ELECTION."

[Sec. 18 (1) (e), Election Act.]

(2) In all other cities, towns, villages and townships the person must be ordinarily resident in the electoral district for a period of TWO MONTHS NEXT PRECEDING THE DAY OF POLLING.

[Sec. 18 (1) (f), Election Act.]

Change of Residence Within Two Months of Polling

In this connection it is well to note the provision of The Election Act that deals with change of residence from one electoral district to another.

[Sec. 19, Election Act.]

This section provides that a person—

- (1) who was a resident in and is entered on the the list prepared for any polling subdivision or polling place **in an electoral district**; or
- (2) who would have been entitled to be so entered had he remained **a resident of such electoral district**; and
- (3) who has removed from **such electoral district**:
 - (a) in the course of his ordinary profession, occupation or calling, and
 - (b) has become a resident of and is domiciled in **another electoral district**, and
 - (c) any person ordinarily resident with such first mentioned person as a member of his family or household who has so removed with such first mentioned person—

shall be entitled to be entered on the list of voters in such last mentioned electoral district by the revising officer or the judge:

- (i) upon filing with the revising officer or judge an affidavit in the prescribed form (Form 3), and
- (ii) producing such other evidence that he was so entered or entitled to be so entered, and
- (iii) that such removal was solely for the purpose of carrying on such profession or occupation—as the revising officer or judge may deem necessary.

Upon being so entered a certificate to be given (Form 4).

The revising officer or judge shall give to every person so entered on his list a certificate in writing (Form 4).

Name to be entered on list.

After the name of every person so entered on the list the revising officer or judge shall write "entered under R.S.O. 1937, chapter 8, section 19."

Certificate to be produced in order to vote.

A person whose name is so entered on the list shall not be entitled to vote unless at the time of tendering his vote he produces to the deputy returning officer the certificate.

NOTE CAREFULLY.—This provision as to change of residence (sec. 19) does not apply in cities and towns of 10,000 or more, or in townships that border on a city having a population of 100,000 or more.

[Sec. 19 (5), Election Act.]

6. DISABLED SOLDIERS' FRANCHISE

[Sec. 18 (2), Election Act.]

A person may be entered on the voters' list and vote who is an inmate or patient or employed and resident in any military hospital or institution for treatment or vocational training, or in a hospital or institution for the blind or deaf, or any eleemosynary institution situated in the electoral district if such person is a British subject, is not qualified to vote under the general qualification, whether or not he or she has attained the full age of twenty-one years, and whether or not he or she is an Indian, enfranchised or unenfranchised, or of whole or part Indian blood, providing such person is serving or has served in the present war or in the Great War of 1914-1918.

The letters "D.S.F." (Disabled Soldiers' Franchise) shall be entered on the voters' list after the name of any person qualifying as above.

7. INDIANS

An Indian who has served in any country in the naval, air or military forces of Canada or the British Empire or any part or ally thereof, or with any of the allies of Great Britain in the Great War or the present war is entitled to vote when otherwise qualified, but persons who are unenfranchised Indians of whole or part Indian blood, and who reside or are domiciled among Indians or on an Indian Reserve, are not entitled to be entered on the voters' list or to vote unless they have so served.

The section of The Election Act is as follows:

Sec. 22—(1) A person who is an unenfranchised Indian of whole or part Indian blood and residing or having his domicile among Indians or on an Indian Reserve shall not be entitled to have his name entered on the list of voters or to vote unless such person is serving or has served in any country in the military, naval or air forces of Canada or the British Empire or any part or ally thereof in the present war or in the Great War of 1914-1918. 1939 (2nd Sess.), c. 11, s. 3 (3).

(2) A person alleged by a candidate or by the representative of a candidate to be an Indian or a person of whole or part Indian blood and disqualified from voting under subsection 1, if required by the candidate or his agent or by the deputy returning officer, shall take one of the following oaths in addition to the oath required to be taken by a voter,—

Your swear (*or* solemnly affirm) that you are not an Indian or a person having part Indian blood;

or at his option

You swear (*or* solemnly affirm) that you are an enfranchised Indian;

or at his option

You swear (*or* solemnly affirm) that you do not reside nor is your domicile among Indians or on an Indian reserve;

or at his option

You swear (*or* solemnly affirm) that you are serving (*or* served) against the King's enemies in the present war (*or* in the Great War of 1914-1918). R.S.O. 1937, c. 8, s. 22 (2); 1939 (2nd Sess.), c. 11, s. 3 (4).

(3) The territory included in an Indian reserve shall be deemed territory without municipal organization, and the lists shall be prepared for such reserve in the manner provided by Part V of The Voters' Lists Act. R.S.O. 1937, c. 8, s. 22 (3).

NOTE.—These restrictions on Indians do not apply to persons qualified under "Disabled Soldiers' Franchise."

8. WHO MAY VOTE

(1) **Name must be on list.** The deputy returning officer shall not receive the vote of any person whose name is not entered on the polling list, but shall receive the vote of every person whose name is entered thereon, if such person, where required by a candidate or his agent, or by the deputy returning officer, takes the oath of qualification (Forms 1, 2, 30, 31 and 32) and the oath of allegiance (Form 29).
[Sec. 94, Election Act.]

(2) **Where vote can be taken when name is not on the list.** The provisions of section 94, above set out, are subject to two exceptions.

First. Voting by certificate by deputy returning officers, poll clerks or agents of any of the candidates. Where such persons are at a polling place other than the one at which he is entitled to vote, he can obtain a certificate (Form 24), and on the production of such certificate he can vote at the polling place named in the certificate.
[Sec. 86, Election Act.]

This section reads as follows:

Sec. 86.—(1) On the production of the certificate the voter shall have the right to vote at the polling place named therein; but the certificate shall not entitle a voter to vote there unless he has been actually engaged there as deputy returning officer, poll clerk, or agent during polling day, or entitle an agent to vote who is disqualified under section 16.

(2) A person who receives a certificate, whether a deputy returning officer, poll clerk or agent, shall not vote until he has taken one or other of the oaths of qualification, and any person violating the provisions of this subsection shall incur a penalty of \$400; and every vote cast in contravention of this subsection shall be null and void.

(3) The oath shall be administered to a deputy returning officer by the poll clerk, and to a poll clerk or agent by the deputy returning officer.

(4) The deputy returning officer shall enter, or cause to be entered in the column for remarks in the poll book (Form 7), opposite the name, residence and occupation of every person, including himself if he so votes, voting under the authority of a certificate, the words "voted under certificate."

(5) A person voting under the authority of a certificate shall deliver it to the deputy returning officer before receiving his ballot paper.

(6) The deputy returning officer shall enclose all certificates in one envelope.

Second. Voting when name not on list by being vouched for.

NOTE CAREFULLY.—This only applies in the case of a polling subdivision—

(a) **in a township or village;**

(b) **in a town having a population of not more than 3,500 according to the last Dominion census;**

provided that such polling subdivision is not within five miles of a city having a population of 100,000 or over.

Section 95 of The Election Act reads as follows:

Sec. 95—(1) The following provisions of this section shall apply in the case of a polling subdivision in a township or village, and in a town having a population of not more than 3,500 according to the last Dominion census, provided that such polling subdivision is not within five mile of a city having a population of 100,000 or over.

(2) The deputy returning officer, if required by any person whose name is not on the polling list and who is vouched for by an elector whose name is upon the polling list and who is resident in such polling subdivision, shall administer to such person an oath in the following form,—

You swear that your name is (*full name of applicant*), that you reside at (*give street number, lot, concession, etc.*), and that your name as you verily believe has been omitted in error from the polling list. So help you God;
and to such other person the deputy returning officer shall administer an oath in the following form,—

You swear that your name is (*full name of voter*), that you reside at (*give street number, lot, concession, etc.*), and that you are the person named by the said name on the polling list.

That you well know (*insert name of applicant*) and that he is as you believe duly qualified to be entered on the polling list and to vote at this election. So help you God.

(3) The deputy returning officer shall then administer to the applicant the oath of allegiance (Form 29) and the proper oath to be administered to voters (Forms 30, 31 and 32) (leaving out paragraph 1 in this oath) and shall cause the applicant's name to be added to the polling list with the word "sworn" written thereafter.

(4) The applicant upon taking the oath and being so vouched for shall be entitled to vote.

In all other cases the name **must** be on the list to enable the person to vote, and in such cases **no person shall be entitled to vote at any election unless his name is duly entered on such polling list.**

And it must be noted that this section 95 does not apply to any polling subdivision in a township, no matter how far from a city of 100,000, where such township borders on a city having a population of 100,000 or more.

Examples of cases where section 95 applies and the voter may be vouched for:

- (1) Militiamen, students, mariners, etc., as set out in section 20.
- (2) Naturalized British subjects.
- (3) Women who state they have become British subjects by marriage, or by naturalization as a British subject of her parent while she was a minor.

Of course the above voters would have to be otherwise qualified. Also any other person who is legally qualified may be vouched for.

This only applies to a polling subdivision in a township or village or in a town with not more than 3,500 population, where such polling subdivision is not within five miles of a city of 100,000 or over. And does not apply to any polling subdivision in any township which borders on a city of 100,000 or over.

9. WHERE VOTERS TO VOTE

Except in the case of any person entitled to vote who has been appointed deputy returning officer, poll clerk or agent of any of the candidates, each voter must vote in the polling subdivision where he resides.

[Sec. 84, Election Act.]

This section is as follows:

(1) Subject to the provisions of the next succeeding section, if the name of a person entitled to vote is entered on the polling list for more than one polling subdivision he shall vote only at the polling place for the subdivision in which he resides at the time of the polling, if entitled to vote in such subdivision:

(2) Subject to the provisions of the next succeeding section, where a voters' list has been prepared under Part V of The Voters' Lists Act, every person named therein may vote at the polling place on the list for which he is entered and not elsewhere.

(3) A person who votes in contravention of this section shall incur a penalty of \$200.

10. VOTING BY DEPUTY RETURNING OFFICERS, POLL CLERKS AND AGENTS

The section dealing with this is section 85, and is as follows:

(1) The returning officer, on the request of any person entitled to vote, who has been appointed deputy returning officer or poll clerk, or agent of any of the candidates at a polling place other than the one at which he is entitled to vote, shall give to such person a certificate (Form 24) that he is entitled to vote at the polling place at which he is stationed during the polling day, and the certificate shall bear the date upon which it is signed by the returning officer.

(2) The returning officer shall not give such certificate until he has ascertained by reference to the polling list that the applicant is entitled to vote, and after giving such certificate he shall forthwith give notice in writing thereof to the deputy returning officer for the polling subdivision or polling place in which the applicant appears by the polling list to be entitled to vote, and the person to whom the certificate has been given shall not thereafter be entitled to vote in such polling subdivision or polling place.

(3) The returning officer shall not be required to give a certificate under this section unless requested to do so at least two days before polling day.

(4) The certificate shall name the polling place at which the person is to be permitted to vote.

(5) The returning officer shall enter in a list the name, residence and occupation of every person to whom he gives a certificate under this section, the polling place at which such person is under the certifi-

cate authorized to vote, and the polling subdivision or polling place in or at which such person appears by the polling list to be entitled to vote, and state therein whether the certificate is granted to him as deputy returning officer, poll clerk or agent, and if as agent, the name of the candidate for whom he is agent, and the entry shall be made before the certificate is delivered.

(6) The returning officer shall also enter in the list the name of every person applying for a certificate to whom it was refused, with the ground of refusal, and, if the last mentioned person claimed to be the agent of a candidate, the name of the candidate and the list shall be open for inspection by a candidate or by his agent or by a voter.

(7) A returning officer shall not give certificates to more than two agents of the same candidate at one polling place, and he shall not give a certificate under this section except upon the personal or written request of the applicant, and a returning officer who gives a certificate in contravention of this subsection shall incur a penalty of \$400.

11. MARINERS VOTING BY PROXY

Section 89 of The Election Act enables mariners to vote by proxy—"mariner" being defined to mean and include "any man or woman who is serving in His Majesty's naval forces of Great Britain or Canada, or is serving in any capacity on a mercantile vessel registered at a British port at the time of the issue of a writ for any provincial election."

No one may be appointed to act as proxy for a mariner unless such person is the wife, husband, parent, brother, sister or child of the mariner and is of the full age of twenty-one years and entitled to vote in his or her own right at the election.

The forms of proxy to be supplied to the returning officer may be obtained from the election board.

The person to be appointed proxy must apply to the revising officer, at the sittings held for the revision of the lists, to be entered upon the list as a proxy. Not more than one proxy may be appointed in each case, and before voting the proxy must take a special oath. The fact that the mariner voted by proxy is to be recorded in the poll book, and the certificate from the revising officer is to be preserved with the other election papers. A proxy may vote in his own right as well as in the capacity of proxy for the mariner.

A penalty of \$200 and imprisonment for six months may be imposed in case of an offence against this section.



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Ont. Memorandum re qualifica-
 tion of voters

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